

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-328-S - ORDER NO. 2003-236

APRIL 15, 2003

| | | | |
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| IN RE: | Application of Links Water Treatment, LLC |) | ORDER ESTABLISHING |
| | for Approval of an Establishment of Rates |) | RATES AND CHARGES |
| | and Charges for the Operation of a Sewer |) | AND A SERVICE |
| | System, and for the Establishment of a |) | TERRITORY |
| | Service Territory. |) | |

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the request of Links Water Treatment, LLC (Links or the Company) for approval of an establishment of rates and charges for the operation of a sewer system and for the establishment of a service territory. On January 11, 2002, we had issued Order No. 2002-18, which established a rule to show cause proceeding. Prior to the culmination of that matter, the Company agreed to file the establishment case considered herein.

Pursuant to the instructions of the Executive Director, a Notice of Filing was published one time in newspapers of general circulation, in order to inform the public of the pending proceeding. The Notice also informed the public of how to participate in the proceeding. Petitions to Intervene in the case were received from Warren M. Schmidt and the Consumer Advocate for the State of South Carolina (the Consumer Advocate).

Accordingly, a hearing was held on March 27, 2003, at 10:30 AM in the offices of the Commission. The Honorable Mignon Clyburn, Chairman, presided. Links was

represented by D. Larry Kristinick, Esquire. Warren M. Schmidt appeared pro se. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire. The Commission Staff was represented by F. David Butler, General Counsel, and Jeffrey M. Nelson, Staff Counsel.

The Company presented the testimony of Danny Godfrey and Steve Sandlin. The Commission Staff presented the testimony of Sharon G. Scott and William O. Richardson. Neither intervenor presented any witnesses. Various members of the public appeared before the Commission to voice their opinions on the matter before the Commission.

II. DISCUSSION OF TESTIMONY

Danny Godfrey testified on behalf of Links. Godfrey is in possession of a Class A license to operate wastewater plants. He has worked with over 30 different wastewater treatment systems.

According to Godfrey, Links has a 24,000 GPD extended aeration package treatment plant, one pump station, and gravity sewer lines. The discharge is into Motlow Creek. The capacity of the system is over 45 users; however there are fewer than 40 total home sites for potential users. Godfrey notes that the Company has the appropriate surface water discharge permit from the South Carolina Department of Health and Environmental Control. Godfrey testified that he has performed regular maintenance and repairs on the system, and there have been regular upgrades, including the installation of new motors and blowers as needed. Godfrey noted that he has adopted a program of periodic tests, inspections, and preventive maintenance designed to achieve and maintain

efficient operation of the system and the rendition of safe, adequate, and continuous service. Further, Godfrey stated that he maintains and operates the system in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in quality of service furnished, and the safety of persons. Finally, Godfrey testified that he charges Links \$570 per month for his services, plus additional charges for certain testing, maintenance, and repairs.

Next, Links presented the testimony of Steve Sandlin, a co-owner of the system. Sandlin proposes the Links O'Tryon Subdivision located in upper Greenville and Spartanburg Counties as the Company's service area. This subdivision was originally developed in the 1980s. Sandlin states that it is an upscale, golf course community with many regular home sites and several smaller home sites for patio homes. The regular home sites have septic tanks and are not in need of the system. The patio homes are located on lots too small to hold septic tanks, and therefore, the residents of the patio homes make up the users of the system.

Sandlin noted that Danny Godfrey was hired at the start up of the system to handle all aspects of the system's maintenance, repair, and operation, as well as regulatory compliance. Godfrey has been working with the system for over 13 years. Presently, there are 22 customers on the system. Sandlin testified that the original owners of the system did not obtain a Certificate from the Commission for operation of the system, and that he and his partner found out that a certificate was necessary, unless a homeowners association was formed. Sandlin noted that he and his partner discussed the concept of forming a homeowners association with the Links residents in several

meetings over the past two years. At first, several of the homeowners indicated interest in the concept, and an LLC or limited liability company was actually formed. Sentiment apparently changed. Sandlin testified that support for the operation of the utility by the homeowners association faded. The homeowners ultimately refused to take over the system, according to Sandlin, and the Company then applied for a certificate and the establishment of rates and a service territory.

Sandlin further testified that expenses of the system will include electricity, bank fees, fees to Blue Ridge Rural Water, postage, permits, taxes, DHEC compliance, testing, maintenance, repairs, bookkeeping, billing, audit, and professional fees. Sandlin noted that various expenses had been increasing. The Company is not seeking any depreciation expense. The Company, through Sandlin, does propose to set aside \$1,000 a year to create a reserve fund of around \$20,000. The fund would be used for significant upgrades, and especially blowers and pumps, which, according to Sandlin, must be replaced every few years. The fund would also be available in case of the need for emergency, unplanned maintenance, or upgrades. Sandlin stated that the reserve fund would be replenished as money is used for the system. Sandlin estimates total annual expenses based on 2002 data, including \$1,000 annual contribution to the reserve fund to be \$16,256, and also requests an operating margin of 20%. The Company, through Sandlin, is requesting Commission approval to charge \$221.00 per quarter per customer for sewer service to its 22 customers.

Sharon G. Scott, an Auditor for the Commission Staff, also testified. Staff proposed some twelve (12) accounting adjustments to the Company's books. Since the

Company was already operating, Staff examined the test year ending December 31, 2002. Staff's adjustments yielded an Operating Margin of (16.89%). One of Staff's adjustments was to include the total legal expenses associated with this case of \$7,500, because the Company had no rate case history. However, Staff computed the expense and operating margins for 3, 4, and 5-year amortization periods. Legal expense under a 3-year amortization period would be \$2,500 with a resultant operating margin of 7.12%, for a 4-year amortization an expense of \$1,875 with a resultant operating margin of 9.72%, and for a 5-year amortization an expense of \$1,500 with a resultant operating margin of 11.27%. Witness Scott also testified that the resultant operation margin excluding legal fees would be 17.50%.

Whereas the Company did not propose any accounting adjustments, Staff witness Scott proposed, in addition to the legal expense adjustment mentioned above, an adjustment of \$7,688 to adjust revenue to reflect current customers at the establishment rate based on the recommendation of the Utilities Department. Further, Scott proposed an adjustment of (\$442) to adjust electric expense to reflect the actual per book expense for the test year, and an adjustment of \$35 to annualize bank fees of \$12 per month and include other per book bank expenses, said expenses totaling \$195. Scott propounded a (\$29) adjustment to adjust estimated water expenses to reflect the actual per book amount of \$331. In addition, Staff witness Scott proposed an adjustment of \$100 to adjust estimated postage expenses to reflect the actual per book amount of \$160. An adjustment of \$130 was proposed to include the actual expense for the DHEC permit. The total expense for the permit was \$530 and only \$400 was shown for 2002 expenses as filed by

the Company. Scott propounded an adjustment of (\$233) to annualize the operator's fees of \$570 per month and reflect the actual repairs and maintenance expenses per books. Staff proposed an adjustment of \$210 to include the cost of accounting services and a license fee. This amount was not included in the Company's estimated annual expenses per filing. Further, Staff witness Scott proposed an adjustment of (\$1000) to remove the operating reserve as a line item. Operating reserves are not an actual expense and should be deleted as a line item, according to Scott. Staff also proposed an adjustment of \$48 to adjust the Greenville County taxes to reflect the per book amount of \$60. The per filing amount was \$12. Finally, Staff proposed an adjustment of \$158 to compute gross receipts taxes using a factor of 0.008141931 and as adjusted revenue of \$19,448. There were no gross receipts taxes per books.

William O. Richardson of the Commission's Utilities Department also testified. Richardson noted that the proposed charge of \$221.00 per quarter for the system's 22 customers would provide the Company annualized revenue of \$19,448. The Company had also originally requested a tap fee of \$1,000. However, the Company eventually reversed itself and stated that it would not charge a tap fee, but would instead simply make it the responsibility of every owner to tap into the system at their own cost.

Richardson noted that the Company did not have any records to indicate plant investment by categories, since the system was simply part of a large development and no value was assigned to that part of the sewer system. For this reason, there is no depreciation expense. According to Richardson, the wastewater treatment plant and

collection system appeared to be sufficient to render safe, adequate, and continuous service at all times and appeared to be operating as required.

III. FINDINGS OF FACT

1. Links Water Treatment, LLC is a limited liability company organized under the laws of the State of South Carolina which falls under the jurisdiction of this Commission.

2. Links Water Treatment, LLC is a sewer utility providing sewer service to 22 customers in the Links O'Tryon Subdivision which is located in upper Greenville and Spartanburg Counties in the State of South Carolina.

3. Links Water Treatment, LLC is seeking the establishment of a service territory consisting of the Links O'Tryon Subdivision.

4. Links Water Treatment, LLC is seeking to establish a rate of \$221.00 per quarter for each of its 22 customers.

5. The Commission Staff's adjustments should be adopted as filed with two exceptions, which shall be discussed below. An adjustment of \$4,951 should be adopted to adjust revenue to reflect current customers at the establishment rate. An adjustment of \$136 should be adopted to compute gross receipts taxes. Finally, legal expenses would best be amortized over a five-year period, which requires a \$1,500 adjustment. We also agree with Staff's reasoning in removing the \$1,000 operating reserve as a line item since operating reserves are not an actual expense.

6. The testimony presented justifies the granting of an operating margin of 0.0%, because of the over-capacity presently existing in the system.

7. This Commission should approve a quarterly rate of \$189.90 based on the above-noted adjustments and a 0.0% operating margin.

8. The Commission should approve the establishment of the requested service territory.

9. The Commission should approve operating revenues of \$16,711.

10. Commission approval of the service territory and of rates should be contingent on the Company filing an appropriate performance bond, which is consistent with the statutes of this State and Commission regulations.

IV. CONCLUSIONS OF LAW

1. The Company's operations in South Carolina are subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-5-10, et seq. (Supp. 2002).

2. The Commission concludes that each of the Staff's adjustments proposed, with two exceptions, is appropriate and is hereby adopted. The two exceptions are the revenue adjustment and the adjustment for gross receipts taxes. Adjustments approved for these items are \$4,951 and \$136, respectively. Also, an adjustment for legal expenses of \$1,500 is approved, which allows for a 5-year amortization of said expenses. The adoption of a five-year amortization period allows the Company to collect its legal expenses, but reduces the yearly impact of said expenses on the Company's customers.

3. There is no statutory authority prescribing the method which this Commission must utilize to determine the lawfulness of the rate of a public utility. For a sewer utility whose rate base has been substantially reduced by customer donations, tap fees, contributions in aid of construction, and book value in excess of investment, the

Commission may decide to use the “operating ratio” and/or “operating margin” method for determining just and reasonable rates. The operating ratio is the percentage obtained by dividing total operating expenses by operating revenues; the operating margin is determined by dividing the total operating income for return by the total operating revenues of the utility. The Commission concludes that the use of the operating margin is appropriate in this case.

4. The Commission is mindful of the need to balance the respective interests of the Company and of the consumer. It is incumbent upon this Commission to consider not only the revenue requirement of the Company, but also the proposed price for the sewer service, the quality of service, and the effect of the proposed rates upon the consumers.

5. Based upon all of these considerations, the Commission determines that the Company should have the opportunity to earn a 0.0% operating margin on its regulated sewer operations. In order to earn this operating margin, the Company will need to produce \$16,711 in total annual operating revenues. Our reason for this holding is our view of the effect of the proposed rates upon the consumers in this case. Essentially, the Company is asking its 22 customers to pay rates to support a sewer treatment plant that is built to accommodate twice as many customers. Company witness Danny Godfrey stated that the capacity of the system was for over 45 users. Godfrey further explained that because there are less than 40 total home sites for potential users, the capacity of the system will not be exceeded, but it is clear that the builder of the plant envisioned serving twice as many customers. See testimony of Godfrey at 2. We cannot ask the present

customers of the system to pay for the maintenance of this overbuilt plant. In fact, we hereby order the Commission Staff to look into a retrofit of the sewer plant to determine if the operating costs of the plant could be reduced in view of the amount of overcapacity.

6. In order to earn the operating revenues necessary to earn an operating margin of 0.0%, the Company must earn revenues of \$16,711. In order to earn these revenues, we hereby approve a quarterly rate per customer of \$189.90, based on Staff adjustments with the exceptions noted above, a 5-year amortization of legal expenses, and a 0.0% operating margin.

7. The Company's service territory is hereby approved as proposed. This territory includes the Links O'Tryon Subdivision.

8. The approval of the territory and rates established herein are contingent upon the Company filing a performance bond that is consistent with the appropriate statutes and Commission regulations.

9. Accordingly, it is ordered that the rates attached in Appendix A are hereby approved for service rendered on or after the date of this Order, contingent on the filing of the above-described performance bond.

10. It is ordered that if the approved schedule is not placed in effect within three (3) months after the date of this Order, the approved schedule shall not be charged without written permission of the Commission.

11. It is further ordered that the Company maintain its books and records for water operations in accordance with the NARUC Uniform System of Accounts for sewer utilities as adopted by this Commission.

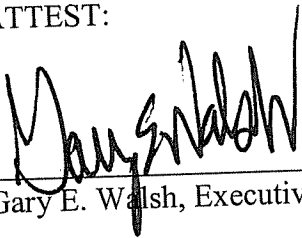
12. That this Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)

APPENDIX A

**LINKS WATER TREATMENT, LLC
P. O. BOX 282
TIGERVILLE, S. C. 29688
864-895-2494**

**FILED PURSUANT TO:
DOCKET NO. 2002-328-S
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EFFECTIVE DATE: APRIL 15, 2003**

SEWER SERVICE

QUARTERLY CHARGES.....\$189.90